

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Petition of Price Cap Holding Companies for)	WC Docket No. 12-63
Conversion of Average Schedule Affiliates to)	
Price Cap Regulation and for Limited Waiver)	
Relief)	
)	
Consolidated Communications Companies)	Transmittal No. 41
Tariff F.C.C. No. 2;)	
)	
Frontier Telephone Companies)	Transmittal No. 28
Tariff F.C.C. No. 10;)	
)	
Windstream Telephone System)	Transmittal No. 57
Tariff F.C.C. No. 7)	

ORDER

Adopted: December 13, 2012

Released: December 13, 2012

By the Commission:

I. INTRODUCTION

1. In this Order we grant a waiver, to the extent indicated, to allow Consolidated Communications, Inc. (Consolidated), Frontier Communications Corporation (Frontier), and Windstream Corporation (Windstream) (jointly petitioners) to convert their respective average schedule study areas to the regulatory requirements applicable to price cap carriers.¹ These waivers will further the public interest by providing the carriers incentives to maintain and promote more efficient operations and by accelerating the reduction of rates currently subject to intercarrier compensation reform.² In this Order, we also terminate the investigation of petitioners' tariffs that were suspended on July 31, 2012 subject to

¹ See Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 12-63 (filed Mar. 1, 2012) (Joint Petition); *Wireline Competition Bureau Seeks Comment on the Petition of Consolidated Communications, Frontier, and Windstream For Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 12-63, Public Notice, 27 FCC Rcd 2422 (Wireline Comp. Bur. 2012).

² As discussed herein, any waivers granted in this order are subject to any future reforms or rule revisions regarding intercarrier compensation, regulation of special access services, price cap regulation, or universal service requirements that the Commission may adopt in the future. See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Special Access for Price Cap Local Exchange Carriers*; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, 27 FCC Rcd 10557 (2012) (*Special Access R&O*).

petitioners conforming such tariffs to the requirements of this order and making any necessary refunds.³

II. BACKGROUND

2. *Previous Price Cap Conversion Orders.* Beginning with the *Windstream Order*,⁴ the Commission granted several waivers allowing price cap carriers to convert their cost company⁵ study areas to price cap regulation under the *CALLS* regulatory model.⁶ Under that model, carriers were, among other things, required to establish initial Price Cap Indexes (PCIs) for their price cap baskets using the rates in effect on January 1 of the conversion year and the demand from the preceding year,⁷ required to target their average traffic-sensitive (ATS) rates to the appropriate target ATS rates pursuant to section 61.3(qq) of the Commission's rules, using an X-factor of 6.5 percent;⁸ and allowed to continue to receive Interstate Common Line Support (ICLS) on a frozen per-line basis for the converted study areas.⁹ Carriers were also required to forego any recovery of a presubscribed interexchange carrier charge (PICC) or carrier common line (CCL) charge and forego assessing a \$7.00 non-primary residential line subscriber

³ *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief; Consolidated Communications Companies Tariff* F.C.C. No. 2; *Frontier Telephone Companies Tariff* F.C.C. No. 10; *Windstream Telephone System Tariff* F.C.C. No. 7; WC Docket No. 12-63, Transmittal Nos. 41, 28, 57, Order, 27 FCC Rcd 8862 (Pric. Pol. Div. 2012) (*Price Cap Suspension Order*).

⁴ *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 (2008) (*Windstream Order*). See also, *Petition of Virgin Islands Telephone Corporation for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 10-39; *China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 10-47; *Petition of Windstream for Limited Waiver Relief*, WC Docket No. 10-55, Order, 25 FCC Rcd 4824 (Wireline Comp. Bur. 2010); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-191, Order, 24 FCC Rcd 4677 (Wireline Comp. Bur. 2009); *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-220, Order, 24 FCC Rcd 4664 (Wireline Comp. Bur. 2009); *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 07-292; *Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-291; *Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket No. 08-18, Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008).

⁵ A cost company is a rate-of-return carrier that determines its rates based on its own costs, as opposed to determining its costs based on average schedule formulas. See, e.g., *Windstream Order*, 23 FCC Rcd at 5298, para. 5, note 16. By contrast, an average schedule company is a rate-of-return company that determines its costs based on formulas approved by the Commission that are designed to produce disbursements that would be received based on the costs of a company that is representative of average schedule companies. See 47 C.F.R. § 69.606.

⁶ *Access Charge Reform*, CC Docket No. 96-262; *Price Cap Performance Review for Local Exchange Carriers*, 94-1; *Low-Volume Long-Distance Users*, CC Docket No. 99-249; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*) (subsequent history omitted).

⁷ See, e.g., *Windstream Order*, 23 FCC Rcd at 5299-5301, paras. 11-14.

⁸ See, e.g., *id.* at 5301, paras. 15-16.

⁹ See, e.g., *id.* at 5302-04, paras. 19-22.

line charge (SLC).¹⁰ Carriers withdrawing cost companies from the National Exchange Carrier Association (NECA) pool were required to employ a cost study based on the previous calendar year's cost and demand data to establish new initial price cap rates.¹¹

3. *USF/ICC Transformation Order*. On November 18, 2011, the Commission released the *USF/ICC Transformation Order*¹², which, among other things, established new rules requiring carriers to adjust, over a period of years, many of their switched access charges effective on July 1st of each of those years, with the ultimate goal of transitioning to a bill-and-keep regime. As an initial matter, the Commission capped the vast majority of interstate and intrastate switched access rates as of December 29, 2011, and price cap carriers were required to remove their switched access services from the traffic-sensitive and trunking baskets.¹³ Price cap and rate-of-return carriers were required to make comparable reductions to certain intrastate switched access rates in 2012 and 2013 if specified criteria were met.¹⁴ Beginning in 2014, price cap and rate-of-return carriers begin a series of rate reductions to transition certain terminating interstate and intrastate switched access rates to bill-and-keep.¹⁵ The price cap transition occurs over six years and the rate-of-return transition occurs over nine years, although they do not reach precisely the same pricing points for terminating tandem-switched transport.¹⁶

4. The Commission also adopted a transitional recovery mechanism to mitigate the impact of reduced intercarrier revenues on carriers and to facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo*.¹⁷ As part of the transitional recovery mechanism, the Commission defined, as "Eligible Recovery," the amount of intercarrier compensation revenue reductions that incumbent LECs would be eligible to recover through a combination of end-user charges (the Access Recovery Charge (ARC)) and, where eligible and if a carrier elects to receive it, intercarrier compensation replacement Connect America Fund support.¹⁸ A carrier's Eligible Recovery is based on a percentage of the reduction in revenue each year resulting from the intercarrier compensation reform transition. The precise percentages and the calculation methods vary between price cap and rate-of-return carriers, with the price cap methodology providing a faster reduction in recovery over time.

5. Price cap and rate-of-return LECs with Eligible Recovery were permitted to assess an ARC on consumers in the form of a monthly fixed charge beginning on July 3, 2012.¹⁹ Subject to certain

¹⁰ See, e.g., *id.*

¹¹ See, e.g., *id.* at 5295, note 4.

¹² See *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

¹³ See 47 C.F.R. §§ 51.907(a), 51.909(a).

¹⁴ See 47 C.F.R. §§ 51.907(b)-(c), 51.909(b)-(c).

¹⁵ See 47 C.F.R. §§ 51.907(d), 51.909(d).

¹⁶ See 47 C.F.R. §§ 51.907, 51.909.

¹⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36. In adopting the recovery mechanism, the Commission explained that it did so in large part "to provide predictability to incumbent carriers that had been receiving implicit ICC subsidies [and] to mitigate marketplace disruption during the reform transition. . . ." *Id.* at 17962-63, para. 858.

¹⁸ *Id.* at 17957, para. 850. In determining how the transitional recovery should be funded, the Commission concluded that "it is appropriate to first look to customers paying lower rates for some limited, reasonable recovery, and adopt[ed] a number of safeguards to ensure that rates remain affordable and that consumers are not required to contribute an inequitable share of lost intercarrier revenues." *Id.*

¹⁹ *Id.*; *July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 12-07, Order, 27 FCC Rcd 2981, 2982, para. 3 (Wireline Comp. Bur. 2012).

identical limitations, the Commission allowed an annual residential and single-line business ARC rate increase of \$0.50 and an annual multiline business ARC rate increase of \$1.00. Price cap LECs are allowed to make five such increases and rate-of-return LECs may make six such increases.²⁰ If an incumbent LEC cannot recover its entire Eligible Recovery through ARCs and is otherwise eligible, it may opt to receive the remainder from intercarrier compensation replacement Connect America Fund support.²¹ Intercarrier compensation replacement Connect America Fund support for price cap LECs phases out over three years beginning in 2017.²²

6. In the *USF/ICC Transformation Order*, the Commission also revised the rules governing high cost support for price cap LECs. Specifically, the Commission froze all forms of universal service support for price cap carriers.²³ Under these revised rules, rate-of-return carriers, including average schedule carriers that are affiliated with holding companies for which the majority of access lines are regulated under federal price caps, are treated as price cap carriers for the purpose of calculating their frozen high cost support.²⁴

7. *The Joint Petition.* On March 1, 2012, petitioners jointly sought a waiver of section 61.41(a)(3) of the Commission's rules to convert their average schedule subsidiaries to price cap regulation effective July 1, 2012.²⁵ Petitioners proposed that each subsidiary withdraw from the NECA tariff on July 1, 2012, and file its own switched access tariff with rates equal to the NECA rates in effect as of January 1, 2012. Each subsidiary would remove its switched access services from price cap regulation upon conversion.²⁶ Petitioners stated that each subsidiary would follow the price cap rate transition. Petitioners also proposed that each subsidiary file its own special access tariff using the January 1, 2012 NECA special access rates, subject to any rate adjustments required or permitted by the price cap regulations.²⁷ Petitioners further noted that conversion to price cap regulation would not impact Connect America funding, because such subsidiaries are already treated as price cap carriers under the revised high cost support rules.²⁸

8. *Comments on the Joint Petition.* AT&T Inc. (AT&T) filed comments opposing the use of NECA rates in establishing initial price cap rates for the petitioners and seeking clarification regarding whether reductions to ATS target rates are required.²⁹ The United States Telecom Association (USTelecom) filed comments supporting grant of the waiver to allow petitioners to convert to price cap regulation.³⁰ In reply comments, AT&T observed that measures short of a full cost study are possible for initializing rates and also noted that there would be effects from the exit of the average schedule carriers on the carriers remaining in the NECA traffic-sensitive pool because the exiting carriers are net

²⁰ 47 C.F.R. § 51.917(e).

²¹ 47 C.F.R. §§ 51.915(f), 51.917(f).

²² 47 C.F.R. § 51.915(f)(3)-(5).

²³ 47 C.F.R. § 54.312(a).

²⁴ *Id.*

²⁵ Joint Petition at 1; *see* 47 C.F.R. § 61.41(a)(3).

²⁶ Joint Petition at 11.

²⁷ *Id.* at 12.

²⁸ *Id.* at 13.

²⁹ AT&T Comments at 2-4.

³⁰ USTelecom Comments at 2-5.

contributors to the pool.³¹ Frontier argued that there will be benefits from the proposal because “[e]fficient access pricing mechanisms like price cap regulation generate incentives to optimize a carrier’s cost structure and promote competition.”³²

9. *Revised Proposal.* In subsequent filings, petitioners outlined a revised conversion plan for withdrawing from the NECA tariffs and converting to price cap regulation.³³ The revised proposal outlined an approach for initializing interstate switched and special access rates at levels reflecting petitioners’ settlements with the NECA traffic-sensitive pool. Petitioners would initialize switched and special access rates by adjusting the December 29, 2011 NECA tariff rates using annualized settlement data based on July 1, 2011 through April 2012 settlements. Base period realized revenue at the authorized rate of return would be equal to NECA pool settlements less LSS receipts for the tariff year starting July 1, 2011. The Initial Price Cap rates would be determined by each holding company on a combined study area level and special access PCIs would be established using the annualized demand times the initial price cap special access rates. Petitioners state that switched access rates would be subject to the transition schedule for price cap carriers under section 51.907(b)-(h), and the converted companies would be eligible for access recovery as non-CALLS price cap carriers under section 51.915. Petitioners propose that for purposes of 51.915(c), these companies’ price cap carrier Base Period Revenue would be the base period realized revenue for Fiscal Year 2011.³⁴ Petitioners would continue to charge the maximum permitted End User Common Line rates.³⁵

10. *Tariff Filings.* On June 18, 2012, NECA filed revised interstate access tariffs to implement the revisions adopted in the *USF/ICC Transformation Order*, which included ARC rates for the average schedule study areas at issue here. These tariffs were suspended on July 2, 2012 for one day and an accounting order was instituted.³⁶ On July 17, 2012, Consolidated, Frontier, and Windstream individually filed interstate access tariffs pursuant to section 61.39 of the Commission’s rules³⁷ to become effective on August 1, 2012, to establish tariffed interstate access rates for the average schedule study areas withdrawn from the NECA pool.³⁸ On the same date, NECA filed an access tariff to become effective on August 1, 2012, removing the petitioners’ average schedule study areas from the NECA interstate access tariffs.³⁹

³¹ AT&T Reply at 2-3.

³² Frontier Reply at 2.

³³ See Letter from Russell M. Blau, Esq., Attorney for Consolidated, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-63 (filed May 14, 2012) (May Proposal). See also Letter from Russell M. Blau, Esq., Attorney for Consolidated, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-63 (filed May 24, 2012) (providing a sample calculation of the proposal’s implementation); Letter from Michael D. Saperstein, Jr., Director of Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-63 (filed Jul. 16, 2012) (July Letter).

³⁴ May Proposal at 2.

³⁵ *Id.* On July 16, 2012, the petitioners filed additional clarifications on the process to be used in establishing rates under the proposed price cap conversion. See July Letter.

³⁶ *July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing No. 12-09, Order, 27 FCC Rcd 7322, 7325, para. 8 (Wireline Comp. Bur. 2012) (*2012 Annual Access Tariff Suspension Order* or *2012 Suspension Order*).

³⁷ 47 C.F.R. § 61.39.

³⁸ Consolidated Communications Companies, Transmittal No. 41, Tariff F.C.C. No. 2 (filed Jul. 17, 2012); Frontier Telephone Companies, Transmittal No. 28, Tariff F.C.C. No. 10 (filed Jul. 17, 2012); Windstream Telephone System, Transmittal No. 57, Tariff F.C.C. No. 7 (filed Jul. 17, 2012).

³⁹ National Exchange Carrier Association, Inc., Transmittal No. 1353, Tariff F.C.C. No. 5 (filed Jul. 17, 2012).

The Pricing Policy Division (Division) suspended the July 17th tariff transmittals of Consolidated, Frontier, and Windstream for one day and instituted an accounting order on July 31, 2012.⁴⁰

III. DISCUSSION

A. Waiver of Section 61.41(a)(3) Is in the Public Interest

11. We find that good cause exists to grant, to the extent described below, a waiver to permit Consolidated, Frontier, and Windstream to convert their average schedule study areas to price cap regulation on January 1, 2013.⁴¹ Petitioners seek to take advantage of the opportunity provided by section 61.41(a)(3) of the Commission's rules and the *Windstream Order* to convert their average schedule study areas to price cap regulation.⁴² Specifically, for interstate switched access charges, they propose to cap switched access rates in accordance with section 51.907(a) and to adopt the shorter price cap transition timetable and the price cap recovery mechanism rather than the procedures applicable to rate-of-return carriers. Petitioners will continue to receive Connect America Fund support as price cap carriers and will establish PCIs for their interstate special access services in a manner consistent with the approach specified in the *Windstream Order*.

12. As an initial matter, we find that the requests presented by the three carriers offer the public interest benefits generally attributed to incentive regulation – specifically, they provide incentives for the carriers to become more efficient, innovative, and productive.⁴³ In 1990, the Commission concluded that incentive-based regulation is preferable to rate-of-return regulation, finding that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.⁴⁴ The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices. More recently, in the *USF/ICC Transformation Order*, the Commission restated the benefits of price cap regulation and again encouraged carriers to convert from rate-of-return to price cap regulation.⁴⁵ Rather than detailing a rule to govern such conversions, however, the Commission noted that future conversions from rate-of-return regulation

⁴⁰ *Price Cap Suspension Order*, 27 FCC Rcd at 8862, para. 2. On August 24, 2012, NECA filed Transmittal No. 1358 proposing to increase its special access rates to reflect, among other things, the withdrawal of the average schedule carriers Consolidated, Frontier, and Windstream from the NECA tariff on August 1, 2012. NECA Transmittal No. 1358, Tariff F.C.C. No. 5 (filed Aug. 24, 2012). The Division suspended the tariff transmittal for one day and instituted an accounting order on September 7, 2012. *National Exchange Carrier Association Tariff F.C.C. No. 5*, WC Docket No. 12-254, Transmittal No. 1358, Order, 27 FCC Rcd 10935 (Pric. Pol. Div. 2012). On October 5, 2012, the Division released an order reconsidering its decision to suspend the August 24 transmittal. *National Exchange Carrier Association Tariff F.C.C. No. 5*, WC Docket No. 12-254, Transmittal No. 1358, WC Docket No. 12-254, Order on Reconsideration, 27 FCC Rcd 12191 (Pric. Pol. Div. 2012).

⁴¹ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁴² 47 C.F.R. § 61.41(a)(3).

⁴³ See *LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 31.

⁴⁴ *Id.*

⁴⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17940, para. 814.

to price cap regulation would be addressed through the waiver process.⁴⁶

13. Grant of the waivers requested here will also facilitate the achievement of Commission policies. Among other things, price cap carriers' terminating End Office Access Service rates will transition to bill-and-keep by July 1, 2017, three years before rate-of-return carriers' terminating End Office Access Service rates will complete such transition.⁴⁷ Price cap carriers also must, under certain conditions, reduce their terminating tandem switched rates to bill-and-keep on July 1, 2018.⁴⁸ The rate reductions for price cap carriers under section 51.907 reduces terminating switched access rates of price cap carriers more quickly than section 51.909 reduces the comparable rates for rate-of-return carriers, with Connect America funding phasing out over three years for price cap carriers beginning in 2017. These procedures for interstate switched access services and the capping of special access rates under the current price cap structure will ensure that these rates remain reasonable while affording petitioners the opportunity to benefit from incentive regulation.

14. The resolution of this petition is interrelated with the review of the Eligible Recovery issues designated for investigation in conjunction with the NECA annual access tariff filing. Thus, under the waiver we grant herein, for tariff year 2012-13, these average schedule study areas will be in the NECA traffic-sensitive pool for the month of July, will be section 61.39 rate-of-return LECs operating under their own tariffs for August through December, and will be subject to price cap regulation for the last six months of the tariff year. In subsequent sections, we first review the July 17 tariff and then set forth principles that will govern the conversion of the study areas to price cap regulation. Our review is focused on the end result—conversion to price cap regulation—treating the July 17 tariff filing as a transitional step. We believe this approach is most consistent with the orderly resolution of the issues presented and will result in the least amount of possible distortion and rate churn. We note that this approach addresses pricing revisions using historical data, which was traditionally used under the price cap structure and was the basis for earlier price cap conversions.

15. Finally, we emphasize that the relief granted in this Order is subject to any future reforms or rule revisions regarding intercarrier compensation, the regulation of special access services, price cap regulation, or universal service requirements that the Commission may adopt in the future.⁴⁹ The review of the July 17 tariff filing and the request to convert the average schedule study areas to price cap regulation are occurring during a time of major reform to the intercarrier compensation regimes.⁵⁰

B. Transitional Period – July 3, 2012 to December 31, 2012

16. As noted above, Consolidated, Frontier, and Windstream individually filed interstate access tariffs on July 17, 2012, pursuant to section 61.39 to withdraw their average schedule study areas from the NECA tariffs and establish their own individual access rates in a single tariff for those study areas beginning on August 1, 2012.⁵¹ Petitioners state that the rates were developed consistent with the revised proposed methodology for establishing access rates set forth in the waiver request to convert to price cap regulation. The carriers filed proposed ARC rates, common line rates, switched access rates, and special

⁴⁶ *Id.*

⁴⁷ See 47 C.F.R. §§ 51.907(f), 51.909(i).

⁴⁸ 47 C.F.R. § 51.907(b).

⁴⁹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd 17663; *Special Access R&O*, 27 FCC Rcd 10557.

⁵⁰ See *id.*

⁵¹ See Special Permission Nos. 12-025, 12-026, 12-027 (Pric. Pol. Div. July 16, 2012); 47 C.F.R. § 61.39(a).

access rates.⁵² They also filed tariff materials based on the price cap transition supporting the new rates for July 3, 2012 to June 30, 2013. Frontier and Windstream each filed a single tariff setting forth unified rates for all of their average schedule study areas.⁵³

17. Rate-of-return carriers exiting the NECA pool are required to establish and file individual interstate access rates and our rules prescribe the method for setting such rates. Section 61.39 allows rate-of-return carriers with 50,000 or fewer access lines to file interstate access tariffs using historical cost and demand data.⁵⁴ Under section 61.39(b)(2)(i), average schedule carriers can make initial traffic-sensitive access tariff filings based on their most recent annual traffic sensitive settlements from the NECA pool, which in this case would be the average schedule settlements for January 1, 2011 through December 31, 2011.⁵⁵ Average schedule settlement formulas project settlements for an upcoming tariff period, not for a calendar year. In the *USF/ICC Transformation Order*, the Commission capped interstate switched access rates at the levels in effect on December 29, 2011, including those of rate-of-return carriers filing under section 61.39.⁵⁶ Using calendar year 2011 average schedule settlements to determine the new capped rates here is problematic because average schedule settlements from the first half of 2011 were not used to determine the NECA rates capped on December 29, 2011. This could lead to adjusted capped switched interstate access rates that exceed, or fall short of, the capped switched access rates after any required switched access rate adjustments are made. Due to these unique circumstances, we adopt a different approach to measure average schedule settlements for purposes of establishing initial interstate switched access rates. Accordingly, we find it is reasonable for the petitioners to use annualized settlement data at an 11.25 percent rate-of-return for the period from July 1, 2011, through April 30, 2012, and the associated annualized demand to develop interstate switched access rates.⁵⁷ We therefore find good cause to waive section 61.39 consistent with these findings.⁵⁸ This process allows each carrier to develop the amount of its net contribution to the NECA traffic-sensitive pool for both switched and special access services. The net contribution amount then allows the carriers to establish reduced switched and special

⁵² Consolidated Communications Companies, Transmittal No. 41, Tariff F.C.C. No. 2 (filed Jul. 17, 2012); Frontier Telephone Companies, Transmittal No. 28, Tariff F.C.C. No. 10 (filed Jul. 17, 2012); Windstream Telephone System, Transmittal No. 57, Tariff F.C.C. No. 7 (filed Jul. 17, 2012).

⁵³ Frontier Telephone Companies, Transmittal No. 28, Tariff F.C.C. No. 10 (filed Jul. 17, 2012); Windstream Telephone System, Transmittal No. 57, Tariff F.C.C. No. 7 (filed Jul. 17, 2012).

⁵⁴ The access line count of some of the involved three study areas exceeds the 50,000 access line limit of section 61.39(a). As such, absent a waiver, those study areas would be required to file based on section 61.38 of the Commission's rules, 47 C.F.R. § 61.38, which employs a prospective pricing model. We conclude that the average schedule status of these study areas, the use in prior price cap conversions of historical demand and pricing data to establish going in access rates and indexes, and the need to establish capped switched access rates for the study areas leaving the NECA traffic-sensitive pool consistent with December 29, 2011, costing principles makes the section 61.39 procedures preferable to attempting to establish rates based on projected costs and demand. This transitional approach employs consistent procedures that avoid potentially distorting results that could occur if data from different time periods were used to set switched and special access rates. Accordingly, to the extent necessary, we, on our own motion, find good cause to and do waive sections 61.39 and 61.38 to permit these study areas to establish rates consistent with the textual discussion.

⁵⁵ 47 C.F.R. § 61.39(b)(2)(i).

⁵⁶ See 47 C.F.R. § 51.909(a).

⁵⁷ Because these average schedule carriers are receiving local switching support through a frozen high cost support amount, settlement amounts reflecting LSS are removed from this calculation to obtain the correct rate relationship for local switching. See 47 C.F.R. § 54.312(a). We note that although basing the conversion on twelve months of historical data would be ideal, the short time these petitioners have to file tariffs before the new year convinces us that annualizing a ten-month sample is sufficient to ensure just and reasonable rates.

⁵⁸ See 47 C.F.R. § 1.3.

access rates reflecting that contribution. The switched access rates developed using this methodology will be deemed to be the December 29, 2011 rates that are capped by section 51.909(a)(1).⁵⁹

18. While it could be argued that initial special access rates should be established using 2011 calendar year settlements, we believe the better course, and one consistent with the use of the same data period to establish new switched and special access rates in section 61.39, is to use a common period of measurement for establishing both switched and special access rates. This avoids possible rate distortions because of changes that may have occurred in average schedule formulas from one year to the next. Accordingly, we waive section 61.39 on our own motion to the extent necessary to allow petitioners to use the same annualized time period to establish interstate special access rates as we are using to establish interstate switched access rates. The special access rates established by this process will be equivalent to the January 1 rate that historically has been used to establish special access price cap indexes.

19. AT&T contends that a company exiting the NECA pool should not be allowed to set initial rates to generate more revenues as a result of its conversion to a non-pooling company than it was entitled to settle for as a member of the NECA pool.⁶⁰ Thus, AT&T argues that the Commission should require petitioners to establish exiting special access rates under the requirements of section 61.38 of the Commission's rules,⁶¹ the method NECA employs to establish its rates, utilizing the projected data that NECA based the July 3, 2012 average schedule rates on to initialize petitioners' special access rates and indexes.⁶² As described above, we take a slightly different approach: we conclude that treating the exiting study areas as section 61.39 carriers for purposes of initializing price cap rates is more consistent with our past practice, noting that section 61.39 rules and the *Windstream* precedent both rely on historical time periods to establish rates.⁶³ Moreover, we find that using historical cost and demand data is the best way to prevent carriers from gaming the transition process by skewing cost and demand projections in their favor, and provides a more accurate estimate of a converting average schedule carrier's costs and demand for purposes of establishing price cap indexes.⁶⁴ AT&T has not explained how abandoning the historical approach to establishing petitioners' costs in converting to price cap regulation in favor of using projected revenues under their July 2012 average schedule settlements will produce a better estimate of the appropriate carrier costs, the requirement of our rules. Moreover, we note that AT&T's proposal would require switched and special access rates to be established using different data periods, which we explained above is problematic because of rate distortions that could occur. In sum, while we agree with AT&T that NECA settlements should be used to approximate the average schedule carriers' costs and to initialize special access rates, we disagree as to the particular time period that should be used. Under the *Windstream* precedent converting carriers subject to section 61.38 were required to use cost and demand data from the preceding calendar year rather than projected cost and demand data for the upcoming tariff year. While we adjust the measurement period slightly here to accommodate the capping of switched access rates in the *USF/ICC Transformation Order*, the principle remains the same.

⁵⁹ 47 C.F.R. § 51.909(a)(1).

⁶⁰ Letter from Brian J. Benison, Director Federal Regulatory for AT&T, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-63, at 1 (filed Sept. 24, 2012) (AT&T *Ex Parte* Letter).

⁶¹ *Id.*; see 47 C.F.R. § 61.38. Requiring the petitioners to establish exiting special access rates under section 61.38 would require the petitioners to use NECA's special access rates that became effective on July 3, 2012, adjusted to reflect the petitioner's projected settlements and demand for the 2012-13 tariff period. See 47 C.F.R. § 61.38.

⁶² AT&T *Ex Parte* Letter at 1.

⁶³ We note that the manner that NECA uses to develop rates is not determinative of individual carrier treatment.

⁶⁴ We note that petitioners requested the conversion to occur on July 1. Joint Petition at 1. The result here is the same as would have resulted if the conversion had occurred then. The petitioners are not seeking to game the process. We conclude that the approach we take based on the existing precedent best serves the public interest.

Therefore, we reject AT&T's arguments regarding how the converting carriers should establish and initialize special access rates, insofar as AT&T argues that the converting carriers should use projected data.

20. Petitioners appropriately propose to use the \$6.50 and \$9.20 subscriber line charge caps for residential and single-line business and multiline business, respectively. Those are the rates currently being charged under the NECA common line tariff and thus reflect cost as required by section 61.39(b)(3).⁶⁵ Moreover, Consolidated, Frontier, and Windstream do not receive a separate ICLS amount because, as noted above, that amount is included in the frozen high cost support received by price cap carriers.

21. The Eligible Recovery for Consolidated, Frontier, and Windstream for the period through December 31, 2012, must be based on the rate-of-return recovery rules set forth in section 51.917(d)(1)(i) because the price cap conversion does not occur until January 1, 2013.⁶⁶ Consolidated, Frontier, and Windstream assessed switched access rates from the NECA traffic-sensitive tariff for each of the average schedule study areas during the month of July 2012. From August 1 through December 31, 2012, each average schedule study area is assessing switched access charges under its own tariff. This tariffing structure could support Consolidated, Frontier, and Windstream each calculating Eligible Recovery separately for July under the NECA tariff and August through December under the individual carrier tariffs. In its October 4, 2012 Direct Case in the tariff investigation of the individual carrier ARC rates filed by NECA for its pooling carriers, NECA excluded July 2012 revenue data relating to the Consolidated, Frontier, and Windstream average schedule study areas in determining the remaining pooling carriers' Eligible Recovery.⁶⁷ The simplest means of addressing the effects of NECA not recognizing the July revenue contribution of the exiting average schedule carriers is factored in when calculating petitioner's Eligible Recovery. Consolidated, Frontier, and Windstream each shall calculate its Eligible Recovery using switched access rates reflecting its having left the NECA pool and then adjusting the calculated Eligible Recovery for the additional revenues realized in July because they billed switched access at NECA tariffed rates for that month.⁶⁸ Each average schedule study area's demand projection shall be done on an annual basis because the other data used in the calculation is annual.

22. Consolidated, Frontier, and Windstream shall file rate-of-return Tariff Review Plans (TRP) and any required tariff revisions within seven (7) days of the release of this Order, reflecting the determinations in this Order. Each carrier may allocate the reduction resulting from having assessed the higher NECA switched access rates from July 3 through July 31, 2012, among its study areas to calculate

⁶⁵ 47 C.F.R. § 61.39(b)(3).

⁶⁶ 47 C.F.R. § 51.917(d)(1)(i).

⁶⁷ *Investigation of Certain 2012 Annual Access Tariffs*, Direct Case of NECA, WC Docket No. 12-233 (filed Oct. 4, 2012). NECA did not consider the projected interstate switched access revenues of the exiting average schedule study areas in making its calculation of Eligible Recovery for the remaining pool members, or provide any Eligible Recovery calculations or support for the exiting average schedule study areas. NECA assumed this would be addressed through this proceeding. This approach significantly simplified the NECA process of determining Eligible Recovery and will simplify the true-up that will occur in connection with the 2014 annual tariff filings of NECA and the exiting average schedule study areas. It also ensures that the July 2012 net contribution amount (the difference between NECA's tariffed rates and the rates tariffed by the average schedule carriers) will be recognized and used to offset the average schedule carriers Eligible Recovery. This waiver is therefore conditioned on Consolidated, Frontier, and Windstream making this offset in calculating its Eligible Recovery. NECA shall ensure that the pooling process does not reflect the net contribution amounts for July 2012 of these carriers.

⁶⁸ To spread this adjustment over the 2012-13 tariff period, a comparable adjustment must be made to the Eligible Recovery calculated pursuant to the price cap TRPs to be filed in December.

the ARC charges to be assessed. They shall document this as part of their respective TRP filings.

23. Consolidated, Frontier, and Windstream shall file revised Eligible Recovery worksheets with the Universal Service Administrative Company (USAC) reflecting these new rates and calculations at the time they file the TRPs with the Commission. USAC will compensate each study area for each month from July through December based on 1/12 of the total annual Eligible Recovery for that study area.⁶⁹ USAC shall make the necessary adjustments to Connect America Fund intercarrier compensation replacement funding in the normal course of processing such claims.

24. Each petitioner must certify that its filing is true and correct to the best of its knowledge, that it is not seeking duplicative recovery, and that it complied with sections 51.917(d), 51.917(e), and 51.917(f) of the Commission's rules.⁷⁰

25. We also terminate the investigation of the Consolidated, Frontier, and Windstream July 17 tariff filing. We find that rates tariffed in compliance with this Order will be just and reasonable. We will review petitioners' filings of rate-of-return TRPs and any revised rates to ensure compliance with this Order. Any issues those filings may raise will be dealt with separately as a compliance filing.

C. Conversion to Price Caps on January 1, 2013

26. Above, we determined that the public interest would be served if petitioners were allowed to convert their average schedule study areas to price cap regulation on January 1, 2013. This will require Consolidated, Frontier, and Windstream to take certain steps to comply with price cap regulations and the intercarrier compensation rules applicable to price cap regulated carriers, which we outline in the following paragraphs.

27. Consolidated, Frontier, and Windstream will each have to file supporting materials establishing initial PCIs for special access services. Each carrier shall use the special access rates developed pursuant to the procedures outlined in Section III(B) and the associated demand to develop its PCI for the special access basket. Under the special circumstances presented by these average schedule study areas leaving the NECA pool, we find that those special access rates and demand are the appropriate rates and demand to use in setting initial PCIs for the special access basket. As in previous conversions to price cap regulation under the *CALLS* rules, there is no requirement for further reductions in the special access PCI.⁷¹ Consistent with the Commission's price cap rules, each carrier must establish Actual Price Indexes, service categories, and Service Band Indexes for the special access basket.

28. Beginning January 1, 2013, Consolidated, Frontier, and Windstream will become subject to the price cap transition rules in section 51.907 and to the price cap recovery rules for non-*CALLS* study areas set forth in section 51.915.⁷² Thus, Consolidated, Frontier, and Windstream will each need to file a new TRP worksheet supporting Eligible Recovery reflecting the election of price cap regulation following the recovery procedures set forth in section 51.915(d)(1)(i).⁷³ The demand that each carrier

⁶⁹ In July 2014, rate-of-return carriers are required to true-up their demand results for tariff year 2012-13. 47 C.F.R. § 51.917(d)(1)(iii). Consolidated, Frontier, and Windstream shall maintain the necessary records to permit them to true-up for the period during which they were operating as a rate-of-return carrier, *i.e.*, July 3 to December 31, 2012. *Id.*

⁷⁰ 47 C.F.R. § 51.917(d)-(f).

⁷¹ See 47 C.F.R. § 61.45(b)(1)(iv).

⁷² 47 C.F.R. § 51.915.

⁷³ 47 C.F.R. § 51.915(d)(1)(i).

shall use in calculating its Eligible Recovery in future years should be the relevant demand associated with the development of its Base Period Revenue. Since these converted average schedule study areas are now part of a price cap holding company,⁷⁴ if the holding company in its June 2012 annual access tariff filing developed ARC rates at the holding company rather than study area level, each carrier must file an ARC worksheet that shows the inclusion of these converted study areas in the holding company calculation. To the extent that these TRPs allow the carrier to collect an amount less than the ARC it is charging in any of its study areas on December 31, 2012, it must file revised ARC rates. As with the first six months, the price cap TRPs must be filled out using annual data. In conjunction with its 2013 annual access tariff filing, Consolidated, Frontier, and Windstream may increase the ARCs they assess consistent with section 51.915(e).

29. Each carrier's Eligible Recovery worksheets shall also be filed with USAC to form the basis for any Eligible Recovery from January 1, 2013 through June 30, 2013. USAC shall compensate the carriers for the final six months based on 1/12 of the annual amount reflected in the price cap TRP for each of the six months.

30. Consolidated, Frontier, and Windstream must each certify that its price cap filing is true and correct to the best of its knowledge, that it is not seeking duplicative recovery, and that it complied with sections 51.915(d), 51.915(e), and 51.915(f).⁷⁵

31. The converting average schedule study areas of Consolidated, Frontier, and Windstream may continue to charge the common line, interstate switched access and special access rates in effect on December 31, 2012 unless our review of the filings required under Section III(B) require a change in such rates, in which case the rates shall be the adjusted rates. The interstate SLCs and switched access charges shall be caps on the respective rates that may be charged. Consolidated, Frontier, and Windstream may not assess a non-primary Residential SLC or a PICC, consistent with previous price cap conversions.⁷⁶

D. NECA Pooling Issues

32. As AT&T notes in its reply comments, when a net contributor to the pool leaves the pool, that departure would require the remaining pool members to increase rates to continue receiving the same level of compensation from the pool, once the contribution is lost.⁷⁷ Thus, just as the exiting carriers are being required to reduce their switched access rates to reflect the amount of the net contribution to switched access and to establish new capped switched access rates, NECA must be required to increase its switched access rates above the rates in effect on December 29, 2011 to ensure that the remaining pooling carriers are not harmed by the action of Consolidated, Frontier, and Windstream leaving the pool. Accordingly, on our own motion, we find good cause to waive section 51.909(a) to the extent necessary to allow NECA to increase its switched access rates by an amount necessary to reflect the lost contributions to switched access rates of the pool. This adjustment shall be done on an annualized basis so that there will be no windfall benefit to the pooling members in future years. These revised rates will become NECA's new capped switched access rates.⁷⁸

⁷⁴ See 47 C.F.R. § 51.915(e)(3).

⁷⁵ 47 C.F.R. § 51.915(d)-(f).

⁷⁶ See, e.g., *Windstream Order*, 23 FCC Rcd at 5302-04, paras. 19-22.

⁷⁷ AT&T Reply at 2. Conversely, if a net recipient left the pool, the opposite effect would result – the remaining members would be better off.

⁷⁸ The capped switched access rates are the rates that must be used in calculating the pool projected interstate switched access revenues in calculating a carrier's Eligible Recovery in future TRP filings. To the extent that these higher rates result in additional revenues during the current tariff period, those revenues must be taken into (continued....)

33. Given the uncertainty of how a price cap conversion would work and how the switched access rate caps would be applied in such cases, we find it is appropriate for NECA to revise its rates on a prospective basis. Accordingly, NECA shall file revised rates to be effective on January 1, 2013, reflecting any adjustments to interstate switched access rates made possible by this waiver. In making the adjustments, NECA shall distribute the increases among rate elements in a manner that maintains the revenue relationships between local switching, tandem-switched transport, and dedicated transport services. This will prevent the gaming of the rate caps in relation to future transitions contemplated by the transition required under section 51.909. NECA need not file revised TRPs for each of its pooling carriers with its filing to change any carrier's Eligible Recovery calculation. Any differences will be accounted for in the true-up to occur in 2014.

IV. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-203, and 254(g), that the joint petition for waiver file by Consolidated, Frontier, and Windstream IS GRANTED to the extent described herein.

35. IT IS FURTHER ORDERED, that, pursuant to section 204 of the Communications Act of 1934, as amended, 47 U.S.C. § 204, the investigation and accounting order imposed in the *Price Cap Suspension Order*, 27 FCC Rcd 8862, IS TERMINATED.

36. IT IS FURTHER ORDERED, that, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, section 51.909(a) of the Commission's rules, 47 C.F.R. § 51.909(a), IS WAIVED to the extent described herein.

37. IT IS FURTHER ORDERED that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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account in making the true-up in connection with the 2014 annual access tariff filing. 47 C.F.R. § 51.917(d)(1)(iii).